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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 15
B.C.I. FINANCES PTY LIMITED (In Liquidation),	Case No. 17-11266
Debtor in a Foreign Proceeding.	

DECLARATION OF TOBIN P. MEAGHER

TOBIN PHILIP MEAGHER, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury as follows:

1. I am a legal practitioner and a partner of the firm Clayton Utz of 1 Bligh Street, Sydney, New South Wales, Australia. I am the solicitor for Messrs John Sheahan and Ian Russell Lock in their capacity as joint and several liquidators (the "Liquidators") of B.C.I. Finances Pty Limited (in Liquidation) (Australian Company Number 055 988 531) ("Company"), as appointed pursuant to section 472(1) of the *Corporations Act 2001* (Cth) (the "Corporations Act"), an Act of the Federal Parliament of Australia.

2. I am admitted to practise in the Supreme Court of New South Wales, the Federal Court and the High Court of Australia.

3. This Declaration is comprised of matters that are statements of legal opinion and/or statements of fact. Where the matters stated in this declaration are statements of legal opinion, such statements represent my view of the laws of Australia and the State of New South Wales as a lawyer admitted to practise in those jurisdictions.

4. Where the matters stated in this Declaration are statements of fact that are within my personal knowledge, they are true. Where the matters stated in this Declaration are statements of fact that are not within my personal knowledge, they are derived from documents and/or information supplied to me by or on behalf of the Liquidators and are true to the best of my knowledge, information and belief.

5. I make this Declaration in support of the Liquidators' *Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding* (the "Verified Petition") filed contemporaneously with this Declaration, seeking this Court's recognition of the Company's Australian liquidation proceeding as a "foreign main proceeding" as that term is defined pursuant to section 1502(4) of title 11 of the United States Code, 11 U.S.C. § § 101-1532, as amended from time to time (the "Bankruptcy Code").

A. Introduction

6. The Company was registered as a company on May 1, 1992 under Division 1 of Part 2.2 of the *Corporations Law* of the Australian Capital Territory (a precursor to the Corporations Act). The Company is identified by its Australian Company Number (ACN) 055 988 531. The Company's registered office with the Australian corporate regulator, the Australian Securities and Investments Commission ("ASIC"), is situated at Level 8, 26 Flinders Street, Adelaide, South Australia, Australia.

7. The Company operated as an intercompany borrowing and lending entity within a group of companies controlled and operated by the Binetter family.

8. The Liquidators were appointed on August 27, 2014 as joint and several liquidators of the Company by order of the Federal Court of Australia pursuant to section 472(1) of the Corporations Act. A copy of the order of the Court dated August 27, 2014 evidencing that appointment is attached as Annexure A to the Verified Petition, filed contemporaneously with this Declaration. A copy of the document filed with ASIC on October 31, 2014 evidencing that appointment is attached as Annexure B to the Verified Petition, filed contemporaneously with this Declaration. The Liquidators were earlier appointed as joint and several liquidators of the Company pursuant to a resolution passed at the second meeting of creditors of the Company held on April 23, 2014, pursuant to section 439C of the Corporations Act. A copy of the minutes of the meeting of creditors of the Company held on April 23, 2014 is attached as Annexure C to the Verified Petition, filed contemporaneously with this Declaration. ASIC is a Commonwealth statutory corporation created by section 7 of the *Australian Securities* and *Investments Commission Act 1989* (Cth), and is continued in existence by section 261 of the *Australian Securities and Investments Commission Act 2001* (the "ASIC Act"). ASIC has powers found in the ASIC Act as well as in the Corporations Act.

9. Upon appointment on August 27, 2014, the Liquidators commenced a compulsory winding up of the Company pursuant to the Corporations Act. A compulsory winding is a Court-ordered dissolution of a company, with its assets being collected and realised, and its debts and liabilities discharged, with any remaining balance distributed among the equity holders following which the company is deregistered. A liquidator is an officer of the Court.

10. The conduct of a compulsory winding up is governed by the Corporations Act and the liquidation process and a liquidator's conduct are subject to the ultimate supervision of the Court (where the term "Court" is defined in the relevant sections of the Corporations Act as, relevantly, either the Federal Court of Australia or the Supreme Court of a State or Territory (§ 58AA)).

11. The Corporations Act is presently undergoing some legislative reform. The *Insolvency Law Reform Act* 2016 (Cth) has introduced certain amendments to the Corporations Act. Those amendments are being implemented in stages. The first tranche of amendments came into force on 1 March 2017. A further tranche of amendments is expected to come into force on 1 September 2017 ("September 2017 CA Amendments").

12. The September 2017 CA Amendments repeal certain sections of the Corporations Act. The amendments also provide for the continued operation of other sections in certain circumstances. For example, the current section 536 of the Corporations Act (which allows ASIC to investigate a liquidator) will be repealed as part of the September 2017 CA Amendments. However, where ASIC has commenced its inquiries prior to 1 September 2017, section 536 will continue to apply to those inquiries and, to that extent, the section will have some continued operation after 1 September 2017.

B. Effects of a compulsory winding up on creditors

13. Upon the commencement of the compulsory winding up, all court proceedings and enforcement actions against the Company are stayed, unless the Court gives leave to continue such actions or proceedings (Corporations Act, § 471B).

14. The policy of the Corporations Act is that all creditors must be dealt with in the liquidation and may only be paid from the "common pool" of funds that are available. Creditors must prove their debts and claims in accordance with the process laid down (described below). Creditors are therefore prohibited from directly enforcing their claims against the Company or its property, and any disposition of the Company's property made after the commencement of the compulsory winding up, other than certain exempt dispositions (including those made by, or with the consent of, the Liquidators) is void, unless the Court orders otherwise (Corporations Act, § 468).

15. The restriction on creditors' rights does not apply to secured creditors, who retain the right to enforce their security despite the commencement of winding up (Corporations Act, § 471C).

C. Liquidators' Duties

16. The Liquidators owe a fiduciary duty to the Company, the Company's creditors and the Company's members as a whole. In addition, by virtue of the Corporations Act, the Liquidators are officers of the Company who owe the following statutory duties:

a. to act honestly, in good faith, for proper purposes and in the best interests of the Company (Corporations Act, § 181);

b. to avoid a conflict of the Liquidators' personal interests with the interests of the Company, including not improperly using their position as Liquidators to gain an advantage (Corporations Act, § 182); and

c. to not make improper use of inside information to gain an advantage (Corporations Act, § 183).

17. The Court enforces compliance with these fiduciary and statutory duties.

18. The Liquidators are also bound by the following statutory and common law duties:

a. to be, and to be seen to be, independent and impartial, and not to favour anyone nor act as the mouthpiece of any particular creditor (*Re Intercontinental Properties Pty Ltd* (1977) 2 ACLR 488);

b. to complete the administration of the affairs of the Company within a reasonable time and without protracting the liquidation where there is no reason to do so (Corporations Act, § 480(a));

c. to seek the advice of professionals in areas in which the Liquidators are not qualified, including, if applicable, to obtain legal advice (*City & Suburban v Smith as liquidator of Conpac* (1998) 28 ACSR 328);

d. to act with a reasonable degree of care and skill (*Gray v Bridgestone Aust Ltd* (1986) 4 ACLC 330);

e. to preserve and take possession of assets of the Company, including taking an inventory of assets, insuring them, wisely investing funds and defending any legal action against the Company for recovery of assets or claims for damages; and

f. to keep proper books (accounts and records) containing entries or minutes of proceedings at meetings and other such matters as prescribed (Corporations Act, § 531 (this section is scheduled to be repealed pursuant to the September 2017 CA Amendments and is being replaced with a provision in similar terms in Schedule 2 § 70-35), and § 542 (this section is scheduled to be repealed pursuant to the September 2017 CA Amendments and replaced with a provision in similar terms in Schedule 2 § 70-35)).

D. Liquidators' Powers

19. During the course of the Company's compulsory winding up, an officer of the company must not perform or exercise a function or power of that office (Corporations Act § 471A (this section is scheduled to be repealed pursuant to the September 2017 CA Amendments and replaced with the new § 198G, in broadly similar terms)), and save for any enforcement by secured creditors against secured collateral granted by the Company, the Liquidators assume exclusive control over the Company's property, business and affairs. The Liquidators have a number of specific powers, including:

a. the power to collect the Company's property and apply it in discharge of its liabilities (Corporations Act, § 478(1)(a));

b. the power to settle a list of contributories (persons liable as shareholder members or past members to contribute to the Company's property on the winding up) (Corporations Act, § 478(1A));

c. the power to rectify the register of members (Corporations Act, § 478(1B));

d. the power to bring or defend legal proceedings in the name of the Company (Corporations Act, § 477(2)(a));

e. the power to do all such other things as are necessary to wind up the affairs of the Company and distribute its property (Corporations Act, § 477(2)(m));

f. ascertaining and taking possession of all property of the Company (Corporations Act, § 474(1));

g. the power to sell, or otherwise dispose of, all or any part of the Company's property (Corporations Act, § 477(2)(c));

h. the power to appoint a solicitor to help the Liquidators with their duties (Corporations Act, § 477(2)(b));

i. the power to do all acts and execute in the Company's name and on behalf of the Company all deeds, receipts and other documents, and when necessary, use the Company's seal (Corporations Act, § 477(2)(d)); and

j. the power to draw, make and endorse any bill of exchange or promissory note in the name and on behalf of the Company (Corporations Act, § 477(2)(f)).

20. The Liquidators' powers are conferred on them for the purpose of completing the winding up. These powers also include:

a. the ability to apply to the Court to obtain an order that those in possession deliver up the records or the property of the Company (Corporations Act, § 483(1));

b. the power to fix a time within which debts and claims must be proved (Corporations Act, § 488(1)(d), *Federal Court (Corporations) Rules* 2000 (Cth), r. 7.10);

c. the ability to convene meetings to ascertain the wishes of creditors and contributories of the Company (Corporations Act, § 488(1)(a), *Federal Court (Corporations) Rules* 2000 (Cth), r. 7.10); and

d. the power to do all such other things as are necessary for the winding up of the affairs of the Company and distributing the Company's property (Corporations Act, § 477(2)(m)).

E. The Liquidators' Actions are Subject to Court Supervision

21. The Liquidators may, at any time, apply for directions in relation to any question arising under the winding up (Corporations Act, § 479(3) (this section is scheduled to be repealed pursuant to the September 2017 CA Amendments and will be replaced with Schedule 2, §§ 90-15(1), 90-15(3)(a) and 90-20(1)(d))).

22. If it appears that the Liquidators have not properly performed any of their duties (as discussed above), the Court may, on its own initiative or on an application by a person with a financial interest in the Company's liquidation or by ASIC, enquire into the Liquidators' actions and make consequential orders, including (without limitation) an order that the Liquidators be personally liable to make good any loss sustained by the Company because of the Liquidator's breach of duty (Corporations Act, § 536 (this section is scheduled to be repealed pursuant to the September 2017 CA Amendments and will be replaced with Schedule 2, §§ 90-5, 90-10, 90-15(1), 90-15(3)(e) and 90-15(6))).

23. Any person who is financially interested in the Company's liquidation, if aggrieved by any act, omission or decision of the Liquidators, may apply to the Court, which has broad powers to make any orders as it thinks, including (without limitation) orders confirming, reversing or modifying any act or decision, or remedy the omission by the Liquidators (Corporations Act, § 1321 (this section is scheduled to be repealed pursuant to the September 2017 CA Amendments and will be replaced with Schedule 2, §§ 90-15(1) and 90-20(1)(a))).

24. The Liquidators, who were appointed by the Court, may be removed by the Court (Corporations Act, § 473(1) (this section is scheduled to be repealed pursuant to the September 2017 CA Amendments and will be replaced with Schedule 2, §§90-15(1) and 90-15(3)(b))). Further, the Liquidators' remuneration may, in the absence of an approval by the Company's committee of inspection or its creditors, be determined by the Court (Corporations Act, § 473(2) (this section is scheduled to be repealed pursuant to the September 2017 CA Amendments and will be replaced with Schedule 2, § 60-10(1)(c))). The Court may review the Liquidators' remuneration (Corporations Act (§§ 493(5) and 493(6) (this section is scheduled to be repealed pursuant to the September 2017 CA Amendments and will be replaced with Schedule 2, § 60-11)). The new Schedule 2 § 60-11 will also enable the Court to affirm, vary or set aside such remuneration on a review. In addition, the proposed amendments contemplate that the Court may also order that liquidators to repay to a company certain remuneration received (September 2017 CA Amendments , Schedule 2, §§ 90-15(1) and 90-15(3)(f)).

F. Procedure for Proof of Debt

25. A liquidator may advertise, on a website maintained by ASIC, a day at least 14 days after the notice is advertised on which a creditor may submit particulars of his or her debt or claim (a "Proof of Debt"): reg 5.6.39, *Corporations Regulations 2001* (Cth) (the "Corporations Regulations").

26. The Corporations Regulations are a piece of subordinate legislation of the Federal Parliament of Australia.

27. The duty of a liquidator is not to merely advertise for creditors, but to also write to creditors of whose existence he or she is aware, and who do not send in claims, to enquire if

they have any claim (*Harry Goudias Pty Ltd v Port Adelaide Freezers Pty Ltd* (1992) 7 ACSR 303).

28. A liquidator is required to admit (in whole or in part), reject or require further evidence in support of a proof of debt within 28 days of receiving a written request from a creditor to do so, or such longer period as allowed by ASIC (reg. 5.6.53, Corporations Regulations). If no determination is made within the requisite time frame, the creditor is entitled to apply to the Court for it to deal with the Proof of Debt (reg. 5.6.53(2), Corporations Regulations).

29. A liquidator who rejects a Proof of Debt must, within seven days of rejection, notify the creditor of the ground(s) for this rejection and inform the creditor that an appeal to the Court may be made within 14 days of receiving the grounds for rejection (reg. 5.6.54, Corporations Regulations).

30. The creditor may then appeal to the Court under the Corporations Act, Schedule 2, §§ 90-15(1) and 90-20(1)(a) (referred to at paragraph [20] above) and/or the Corporations Regulations reg 5.6.54(2). Such an appeal to the Court is a hearing *de novo* and, therefore, either party is entitled to adduce fresh evidence.

31. In making a decision on a Proof of Debt, a liquidator is said to act in a 'quasi-judicial' capacity (*Tanning Research Laboratories Incorporated v O'Brien* (1990) 169 CLR 332; *Re Chevron Furnishers Pty Ltd (in liq), Qld Amalgamated Industries Pty Ltd v Harris* (1993) 12 ACSR 565).

G. Examinations under sections 596A or 596B of the Corporations Act

32. On an application by a liquidator, the Court is required under the Corporations Act § 596A to summon certain current or former officers of the company (including those who were officers during the 2 years prior to the commencement of the winding up), to attend an examination concerning the examinable affairs of the company.

33. Under the Corporations Act § 596B, on the application of a liquidator (or other " "eligible applicants") the Court has a discretion to issue summonses to certain other persons to be examined. Summonses may be issued to any persons who have taken part in, or may be able to give information about, the company's examinable affairs. "Examinable affairs", in relation to a company, are:

a. the promotion, formation, management, administration or winding up of the company;
b. any other affairs of the company; or
c. the business affairs of a connected entity of the corporation, insofar as they are, or appear to be, relevant to the company or to anything that is included in the company's examinable affairs because of paragraph a. or b. above,

(Corporations Act, § 9).

34. A liquidator may use the examination process to extract information concerning a company's affairs and to ascertain whether there are causes of actions that can be initiated. The liquidator may also examine a person if it is necessary to obtain answers to questions on oath and have those answers recorded in Court transcripts, which, if signed by the examinee, may be used as evidence in future proceedings (including recovery proceedings) against the examinee.

35. Both the examinee and any other person (even if not summoned) may be required, by order for production, to produce relevant books and records at the examination, in order to assist the obtaining of information from the examinee (Corporations Act, § 597(9)).

36. Examinations are generally held in public. Examinees are entitled to legal representation and may be asked any question about the company and its examinable affairs which the Court thinks appropriate (Corporations Act, § 597(4) & (5B)).

37. The registrar presiding over an examination will ensure that the examination is conducted in a fair and balanced manner. Unfair or irrelevant questions (including questions which do not relate to the "examinable affairs" of the company) may be disallowed.

38. The examinee must not, without reasonable excuse, make a false or misleading statement or refuse or fail to:

a. take an oath or affirmation;

b. answer any question which he is directed by the court to answer; or

c. produce books which were required by any order for production,

(Corporations Act, § 597(7)).

39. Whilst an examinee is not excused from answering a question on the ground that the answer might tend to incriminate, he may nevertheless assert legal professional privilege (if available) in relation to his responses.

40. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 8th day of May, 2017 at Sydney, New South Wales, Australia.

Tobin P. Meagher

Sworn to this 8th day of May 2017 before the undersigned who is duly authorized to witness and attest to the execution of documents of this nature within Australia.

Joseph B. Johnson

A solicitor authorised to witness affidavits in the Supreme Court of New South Wales